

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THOMAS F. BRENNAN,

Petitioner,

CASE NO. 09-cv-10094

v.

JUDGE PAUL D. BORMAN
UNITED STATES DISTRICT COURT

MARY BERGHUIS,

Respondent.

ORDER
DENYING PETITIONER'S MOTION FOR DISCOVERY WITHOUT PREJUDICE

This is a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254. Before the Court is Petitioner Thomas F. Brennan's "Memorandum re Order Requiring Responsive Pleading and Motion for Discovery," filed July 17, 2009. (Dkt. # 9.) In this memorandum and motion, Petitioner is seeking (1) copies of statements by witnesses, (2) the expert witnesses' reports, (3) criminal records of all the prosecution's witnesses, (4) copies of all documents and photographs concerning this case, (5) any and all exculpatory evidence in the control of the prosecution, (6) affidavits and warrants pertaining to the search in this case, and (7) all plea agreements, grants of immunity or other agreements connected with this case.

As a general rule, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). This Court has ordered Respondent to submit a response to Petitioner's petition and all the relevant state court materials, pursuant to Rule 5 of the Rules Governing Section 2254 Cases. Respondent's response and all the Rule 5 materials are not due until September 28, 2009.

Accordingly, the Court **DENIES WITHOUT PREJUDICE** Petitioner's discovery motion. (Dkt. # 9.) Should the Court determine, after reviewing Respondent's response and the Rule 5 materials, that such materials are necessary for the resolution of Petitioner's case, it will reconsider Petitioner's request and issue an appropriate order. Petitioner need not file an additional motion regarding this issue.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated: July 27, 2009

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record by electronic means or U.S. Mail on July 27, 2009.

s/Denise Goodine
Case Manager